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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER, Plaintiff, v. HARRAH'S ENTERTAINMENT, Inc. and DOES 1 through 100, inclusive, Defendants.	Case No. 07 CV 2226 DMS (AJB) Judge: Hon. Dana M. Sabraw Mag. Judge: Hon. Anthony J. Battaglia **PLAINTIFF JAMES M. KINDER'S OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF THE DECLARATION OF MICHAEL KOSTRINSKY SUBMITTED BY DEFENDANT** Date: January 25, 2008 Time: 1:30 p.m. Place: Courtroom 10

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Plaintiff JAMES M. KINDER hereby submits the following objections to and motions to strike portions of the Declaration of Michael Kostrinksy submitted by Defendant in support of its Opposition to Plaintiff's Motion to File First Amended Complaint, naming new defendants.

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1. Declaration Of Michael Kostrinsky, In Its Entirety:

Defendant filed the Declaration of Michael Kostrinsky on January 14, 2008. However, pursuant to Civil Rule 7.1 (e)(3), Defendant could have filed this declaration no later than January 11, 2008. Therefore, the Declaration was filed *three days late*. Therefore, the Declaration of Michael Kostrinsky should be stricken in its entirety.

2. Declaration Of Michael Kostrinsky, Paragraph 2:

Paragraph 2 of the Declaration of Michael Kostrinsky states:

> "*Specially Appearing* Defendant Harrah's Entertainment, Inc. is a Delaware corporation, headquartered in Las Vegas, Nevada. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. *Specially Appearing* Defendant Harrah's Entertainment, Inc. does not make telemarketing or other telephone calls to individuals in California using an automatic telephone dialing system, artificial or prerecorded voice, **or otherwise**."

Grounds For Objection:

Each and every factual statement in this paragraph lacks foundation and therefore this paragraph should be stricken in its entirety. Although Mr. Kostrinsky claims in Paragraph 1 of his Declaration to be the "Chief Litigation Officer for Harrah's Operating Company, Inc.," he does not say how this fact alone gives him any *personal* knowledge of the inner-workings, property holdings, employment records, etc., of each and every entity Plaintiff seeks to name. Moreover, he cites to no specific facts or documents whatsoever, such as corporate charter documents, Secretary of State filings, employment records, phone records, contracts with telemarketing firms, or any type of documentary evidence at all, from which he allegedly draws any of this knowledge. Therefore, this entire paragraph is without foundation and conclusory.

Moreover, Mr. Kostrinsky's statement that "Harrah's Entertainment, Inc. does not make telemarketing or other telephone calls to individuals in California using an automatic telephone dialing system, artificial or prerecorded voice, **or otherwise**" [bold added] is a legal conclusion and should also be stricken. Finally, given that Mr. Kostrinsky says that no one from any of the Harrah's entities has ever so much as picked up a hand set and called a California telephone number, which is entirely ridiculous, his credibility is highly questionable. In addition to the fact that this statement is so obviously not true, it makes no practical sense. How could one person possibly know the day to day job duties of every person working for the sundry Harrah's entities, which employ thousands of people? Even if Mr. Kostrinsky does possess such omniscience, he has not told the court how he acquired any of this knowledge. All that Plaintiff and the court have to go by is that Mr. Kostrinsky is a *lawyer for the Defendant*, whose job necessarily depends on getting Defendant out of legal jams, such as the instant action.

3. Declaration Of Michael Kostrinsky, Paragraph 3:

Paragraph 2 of the Declaration of Michael Kostrinsky states:

> "Harrah's Operating Company, Inc. is a Delaware corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California; Harrah's Marketing Services Corporation is a foreign corporation; is not headquartered in California; and does not own property

in California; Harrah's License Company, LLC is a foreign company and is not headquartered in California; It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. Harrah's Laughlin, Inc. is a foreign corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. And, HBR Realty Company, Inc. is a foreign corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California."

Grounds For Objection:

Each and every factual statement in this paragraph lacks foundation and therefore this paragraph should be stricken in its entirety. Although Mr. Kostrinsky claims in Paragraph 1 of his Declaration to be the "Chief Litigation Officer for Harrah's Operating Company, Inc.," he does not say how this fact alone gives him any *personal* knowledge of the inner-workings, property holdings, employment records, etc., of each and every entity Plaintiff seeks to name. Moreover, he cites to no specific facts or documents whatsoever, such as corporate charter documents, Secretary of State filings, employment records, phone records, contracts with telemarketing firms, or any type of documentary evidence at all, from which he allegedly draws any of this knowledge. Therefore, this entire paragraph is without foundation and conclusory.

As discussed above, given that Mr. Kostrinsky says in Paragraph 2 of his Declaration that no one from any of the Harrah's entities has ever so much as picked up a hand set and called a California telephone number, which is entirely ridiculous, his credibility is highly questionable. In addition to the fact that this statement is so obviously not true, it makes no practical sense. How could one person possibly know the day to day job duties of every person working for the sundry Harrah's entities, which employ thousands of people? Even if Mr. Kostrinsky does possess such omniscience, he has not told the court how he acquired any of this knowledge. All that Plaintiff and the court have to go by is that Mr. Kostrinsky is a *lawyer for the Defendant*, whose job necessarily depends on getting Defendant out of legal jams, such as the instant action.

Moreover, as is discussed in the Reply filed herewith, Harrah's Marketing Services Corporation and Harrah's Operating Company, Inc. have designated agents for service of process on file with the California Secretary of State. They have *consented to suit* in the State of California and are therefore subject to jurisdiction here.

DATED: January 17, 2008

By: /s/ Chad Austin

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